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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 LOUIE MAHONEY, CHRISTINE
11 MAHONEY-MEYER,
12 MARGARET R. JOSE, ROGER
FIANDER,

13 Defendants.

NOS. CR-05-2099-RHW-1
CR-05-2099-RHW-3
CR-05-2099-RHW-6
CR-05-2099-RHW-8

**ORDER ON PRETRIAL
MOTIONS**

14 A pretrial conference was held in the above-captioned case on February 20,
15 2007. Defendant Louie Mahoney was present and represented by Richard Smith;
16 Defendant Christine Mahoney-Meyer was present and represented by Scott
17 Chapman; Defendant Margaret Jose was present and represented by Gregory Scott;
18 Defendant Gerald George was present and represented by Zenon Olbertz; and
19 Defendant Roger Fiander was present and represented by Jack Fiander. Assistant
20 United States Attorney Jane Kirk appeared on behalf of the Government.

21 Before the Court are Defendant Louie Mahoney's Motion to Dismiss
22 Indictment (Ct. Rec. 330), Motion to Bifurcate Forfeiture Proceedings (Ct. Rec.
23 359), Renewed Motion to Dismiss Based on Discriminatory Enforcement (Ct. Rec.
24 362), and Motion to Appoint Co-Counsel (Ct. Rec. 364). Also before the Court are
25 Defendant Christine Mahoney-Meyer's Motion for Joinder (Ct. Rec. 333) and
26 Motion to Change Venue for Trial (Ct. Rec. 335). Defendant Margaret Jose has
27 filed her Motion for Bill of Particulars (Ct. Rec. 338), Motion for Joinder (Ct. Rec.
28 341), and Motion for Extension of Time to File (Ct. Rec. 345). Lastly, the Court

1 also considers Defendant Roger Fiander's Motion to Dismiss Count(s) (Ct. Rec.
2 298), Motion to Dismiss Count(s) 1956(a)(2) (Ct. Rec. 302), Motion for
3 Reconsideration re: Motion to Dismiss Case for Lack of a Predicate Violation per
4 RCW 37.12.010 (Ct. Rec. 319), Motion for Leave to File Interlocutory Appeal (Ct.
5 Rec. 347), and his Memorandum/Notice of Conflict of Interest (Ct. Rec. 366). The
6 Court addresses the substantive motions below in turn. The procedural motions
7 and motions regarding discovery are addressed at the end of this Order. The Court
8 also made oral rulings on several motions listed above, and this Order
9 memorializes those rulings.

10 DISCUSSION

11 I. Louie Mahoney's Motions

12 A. Motion to Dismiss Indictment

13 Defendant Louie Mahoney argues the Court should dismiss the charges
14 against him because the government cannot establish the predicate act for all
15 claims of trafficking in contraband cigarettes. He avers he did not violate
16 Washington cigarette tax laws because all sales alleged in the indictment occurred
17 on the Coeur d'Alene Indian Reservation within Idaho, which does not require tax
18 stamps to be placed on cigarettes sold on Indian reservations. He states he was
19 paid in Idaho and delivered the cigarettes to the purchaser or the purchaser's agent
20 in Idaho on the Coeur d'Alene Reservation, and that title to the property passed to
21 the purchaser at the time and place of sale. Therefore, he committed no act in
22 Washington State or in violation of Washington State law.

23 Mr. Mahoney also argues he did not violate Washington cigarette tax laws
24 because the incidence of tax does not fall on him. He asserts cigarettes sold in
25 Idaho are not "contraband" in Washington at least until the first taxable event, *i.e.*,
26 when any person first sells, uses, consumes, handles, possesses, or distributes them
27 within the state. Even at this time, Defendant submits only the sale of cigarettes to
28 non-members by Indians or Indian tribes are subject to cigarette tax, so the

1 cigarettes cannot by law be contraband until then.

2 Third, Mr. Mahoney alleges he was not required to pre-notify Washington
3 prior to his sale of cigarettes to tribal members in Idaho because it is the tribal
4 seller, not the supplier of cigarettes to him or her, that is required under RCW
5 82.24.250 to give advanced notice before transportation of cigarettes.

6 The government relies on the “aiding and abetting” charge in the indictment
7 to show that Mr. Mahoney is properly charged in the indictment. The government
8 also notes that Mr. Mahoney is charged with conspiracy charges: RICO
9 conspiracy, conspiracy to traffic in contraband cigarettes, and conspiracy to
10 launder money. A conspiracy charge may be tried “in any district where an overt
11 act committed in the course of the conspiracy occurred. It is not necessary that [the
12 defendant] himself have entered or otherwise committed an overt act within the
13 district, as long as one of his coconspirators did.” *United States v. Corona*, 34
14 F.3d 876, 879 (9th Cir. 1994) (citation omitted). All conspiracy charges in this
15 case include overt acts allegedly committed within the Eastern District of
16 Washington. Additionally, Defendant is charged with trafficking in contraband
17 cigarettes by paying Roger Fiander for delivering cigarettes to the Yakama Indian
18 Reservation and for mailing contraband cigarettes into Washington. As to
19 Defendant’s incidence of tax arguments, the government points out that
20 transporting unstamped cigarettes into Washington absent prenotification makes
21 them contraband, regardless of the incidence of tax and where it falls.

22 To the extent Mr. Mahoney points out alleged “flaws” in the Indictment in
23 the government’s case against him, these flaws are adequately addressed by the
24 inclusion of aiding and abetting and conspiracy charges. Accordingly, Mr.
25 Mahoney’s motion to dismiss is denied.

26 **B. Motion to Bifurcate Forfeiture Proceedings**

27 Defendant Louie Mahoney moves the Court to bifurcate the forfeiture
28 proceedings from the trial. Defendant submits that the Third Circuit has, as a rule,

1 required that forfeiture proceedings for property *in persona* be bifurcated from the
2 guilt phase of criminal trials because having to testify about one's property but
3 remaining silent on the charges against one paints a defendant in a difficult light
4 for a jury. *United States v. Sandini*, 816 F.2d 869, 874 (3d Cir. 1987); *cited with*
5 *approval in United States v. Feldman*, 853 F.2d 648, 661-62 (9th Cir. 1988), *cert.*
6 *denied*, 489 U.S. 1030 (1989).

7 The Ninth Circuit has recognized the utility of bifurcating forfeiture
8 proceedings from the guilt phase of trials, but in *Feldman* the court declined to
9 "adopt a blanket requirement that guilt and forfeiture proceedings be bifurcated
10 completely." 853 F.2d at 662. As an example for when bifurcation may not be
11 appropriate, the Ninth Circuit discussed cases in which the government seeks
12 forfeiture of a defendant's interest in a RICO enterprise where "'issues of guilt and
13 forfeiture are likely to converge,' as the forfeiture of the entire interest follows
14 automatically a finding that the enterprise was conducted through a pattern of
15 racketeering." *Id.* The Ninth Circuit then held that

16 trial courts should bifurcate forfeiture proceedings from ascertainment
17 of guilt, requiring separate jury deliberations and allowing argument
18 of counsel. The trial judge may exercise discretion in deciding
19 whether to hold an evidentiary hearing. If the defendant can show, by
20 affidavits or otherwise, that a hearing is required on the extent of his
21 or her assets subject to forfeiture, the court should allow evidence on
22 the issue. Evidence received at this phase may not be used on appeal
23 or at retrial to sustain the conviction, nor in post-trial motions. This
24 procedure preserves the rights of defendants and should clarify the
25 issues in complex trials, without unnecessarily adding to the time to
26 try less complex cases where the extent of forfeitable property is clear
27 and the jury would not benefit from a separate evidentiary hearing.

28 *Id.*

The government has not responded to this motion, but the law of the Circuit
is relatively clear. The Court grants Mr. Mahoney's motion to bifurcate.

**C. Renewed Motion to Dismiss Based on Discriminatory
Enforcement**

Mr. Mahoney also asks the Court to reconsider its earlier order denying his
motion to dismiss based on selective enforcement in light of grand jury testimony

1 of Agent Boyd Goodpastor and Assistant United States Attorney Jane Kirk from
2 August 16, 2005. In that testimony, Ms. Kirk explains why two non-Indian
3 distributors were not indicted along with the Indian Defendants in this case:
4 because the distributors' attorneys approached Ms. Kirk early in the investigation
5 and asked if they were being indicted. Ms. Kirk made the decision at that point
6 that they were not, but subsequently she learned other information and decided to
7 indict the Defendants in this case. She decided not to indict the non-Indian
8 distributors because she had given her word, and she explained to the grand jury
9 that those distributors could possibly be indicted if they failed to cooperate.

10 “[A] motion for reconsideration should not be granted, absent highly unusual
11 circumstances, unless the district court is presented with newly discovered
12 evidence, committed clear error, or if there is an intervening change in the
13 controlling law.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
14 Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th
15 Cir. 1999)). It is considered an “extraordinary remedy, to be used sparingly in the
16 interests of finality and conservation of judicial resources.” *Id.*

17 The Court denied Mr. Mahoney's earlier motion to dismiss based on
18 selective enforcement because he failed to show that “the federal prosecutorial
19 policy ‘had a discriminatory effect and that it was motivated by a discriminatory
20 purpose.’” *United States v. Armstrong*, 517 U.S. 456, 465 (2002). Here, although
21 there was arguably a discriminatory effect of the government's prosecutorial policy
22 in that only Indians were indicted for trafficking in contraband cigarettes, the grand
23 jury testimony only demonstrates that the government's decision not to indict non-
24 Indians was *not* motivated by a discriminatory purpose. Instead, it was motivated
25 by Ms. Kirk's agreement with the non-Indian distributors' attorneys not to indict
26 them. Therefore, the Court denies Mr. Mahoney's renewed motion to dismiss.

1 **D. Motion to Appoint Co-Counsel**

2 Defense counsel Rick Smith moves the Court to appoint co-counsel or
3 second chair counsel in his case based on 18 U.S.C. § 3006A and his declaration.
4 He explains that Defendant Louie Mahoney is charged with 80 of 88 counts in the
5 Indictment; the case is complex; the government's investigation went on for years;
6 the government has had two forensic auditors working on its case; the government
7 has identified 435 exhibits, some of which contain hundreds of pages; the charges
8 involve Tribal law, federal law, Washington and Idaho state law, and accounting
9 principles and practices; the number of documents are likely over 100,000, Mr.
10 Smith is a sole practitioner and in need of additional legal assistance; and there is
11 the potential the government will call over 50 witnesses.

12 The Court recognizes that, generally speaking, the government always has
13 more resources at its disposal than criminal defense attorneys. Were this sufficient
14 reason to appoint co-counsel under the CJA, appointment of co-counsel would be
15 appropriate for every case before this Court. Although this case is complex, the
16 Court declines to appoint co-counsel at this late date, and it believes defense
17 counsel has had adequate time to investigate and prepare for trial so as to
18 vigorously and effectively represent his client.

19 **II. Roger Fiander's Motions**

20 **A. Motion to Partially Dismiss Indictment**

21 Defendant moves the Court to dismiss Count 1, conspiracy to violate the
22 RICO, and part of Count 2, conspiracy to traffic in contraband cigarettes, of the
23 Indictment. Defendant asks the Court to dismiss the portion of Count 2 that
24 includes activities arising in 2002. Defendant submits that co-defendant Louie
25 Mahoney had absolute control over JKL Enterprises, which operated from July
26 1999 to May 20, 2003. Mr. Fiander's involvement is alleged to have lasted from
27 January 15, 2002, to May 15, 2003. Defendant asserts there are no facts stated in
28 the Indictment sufficient, even if proved, to satisfy the "operation and

1 management” or “control” elements required for a RICO conspiracy. He maintains
2 he was a mere deliveryman who was compensated during a sporadic part of the
3 enterprise period for a limited service and who had no authority in the enterprise.

4 The elements necessary to prove a RICO conspiracy are as follows: “proof
5 (1) of an ongoing organization, formal or informal, (2) which exhibits a
6 hierarchical or consensual decision-making structure beyond that inherent in the
7 alleged racketeering activity, and (3) in which the various associates function as a
8 continuing unit.” *United States v. Fernandez*, 388 F.3d 1199, 1223 (9th Cir. 2004),
9 *cert. denied* 544 U.S. 1043 (2004). Defendant sets out the “operation and
10 management test” formerly relied upon by the Ninth Circuit as a requisite for
11 finding a RICO conspiracy. However, in *Fernandez*, the Ninth Circuit repudiated
12 that test due to a change in law. *Id.* at 1230. Therefore, “a defendant is guilty of
13 conspiracy to violate § 1962(c) if the evidence showed that she ‘knowingly
14 agree[d] to facilitate a scheme which includes the operation or management of a
15 RICO enterprise.’” *Id.* (quoting *Smith v. Berg*, 247 F.3d 532, 538 (3d Cir. 2001)).

16 This test to determine whether a defendant was a member of a RICO
17 conspiracy is much broader than the operation and management test cited by
18 Defendant, and it encompasses his activities as they are alleged in the Indictment.
19 Further argument as to whether Mr. Fiander actually violated § 1962(d) is for the
20 jury, for the Indictment is sufficient on its face.

21 In regards to Count 2 of the Indictment, Defendant asserts the government
22 has failed to demonstrate how, with respect to the counts occurring in 2002, Mr.
23 Fiander was a party to a CCTA conspiracy because the cigarettes delivered to the
24 Yakama Reservation during that year did not exceed the Tribe’s allocation of tax
25 exempt cigarettes under Washington law. Defendant lists the numbers of cigarettes
26 delivered and the number of cigarettes allocated. However, this argument fails to
27 recognize that the violation of Washington cigarette tax law is not based on
28 exceeding the allocation of cigarettes. Rather, it is based on the failure to notify

1 the proper authorities when delivering the unstamped cigarettes from out-of-state.
2 Accordingly, the Court denies this motion.

3 **B. Motion to Dismiss Money Laundering Charges Based Upon 18**
4 **U.S.C. § 1956(a)(2)**

5 Next, Defendant moves the Court to dismiss the portions of the Indictment
6 charging him with violating § 1956(a)(2). Mr. Fiander bases his argument on his
7 misreading of the Indictment. The Indictment does not charge him with a violation
8 of § 1965(a)(2); instead, it charges him and others with a violation of § 1956(a)
9 and with § 2, the aiding and abetting statute. The Indictment is proper, and the
10 Court denies this motion.

11 **C. Motion for Reconsideration**

12 Defendant asks the Court to reconsider its Order (Ct. Rec. 314, p. 16-19)
13 denying his motion to dismiss the CCTA and CCTA-related counts for lack of a
14 predicate violation of applicable state cigarette tax laws. Defendant submits that
15 the Court's order denying his latest motion to dismiss and its order denying his
16 original motion to dismiss (Ct. Rec. 142) appear to rest on the "erroneous"
17 assumption that Defendant engaged or intended to engage in a sale, delivery, or
18 other transaction with non-Indians. Defendant maintains he did not engage in any
19 such transaction, and he asserts that to whom the cigarettes were to be sold by the
20 Indians to whom he delivered the cigarettes after the delivery was outside the
21 scope of his knowledge, duties, and conduct.

22 As stated above, "a motion for reconsideration should not be granted, absent
23 highly unusual circumstances, unless the district court is presented with newly
24 discovered evidence, committed clear error, or if there is an intervening change in
25 the controlling law." *Kona Enterprises, Inc.*, 229 F.3d at 890 (quoting 389 *Orange*
26 *Street Partners*, 179 F.3d at 665). It is considered an "extraordinary remedy, to be
27 used sparingly in the interests of finality and conservation of judicial resources."
28 *Id.*

Mr. Fiander has not presented newly discovered evidence or an intervening
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1 change in the controlling law. Therefore, he must show that the Court committed
 2 clear error in its earlier Order. Mr. Fiander attempts to do this by distinguishing
 3 himself from defendants in the case law cited by the Court who are all tribal
 4 retailers of cigarettes. He asserts, as a tribal member who only delivered cigarettes
 5 to other tribal members/entities, that his situation is distinguishable from that of
 6 tribal retailers and the holdings of the cases cited does not apply to him.

7 The government notes that the main issue is whether Indians within Indian
 8 country are still subject to the minimal burdens imposed by the State to prevent
 9 fraudulent transactions involving untaxed, unstamped cigarettes. The government
 10 submits that the minimal burden's application to tribal-member-to-tribal-member
 11 transfers should cause no concern, for in *Washington v. Confederated Tribes of the*
 12 *Colville Indian Reservation*, 447 U.S. 134, 159-60 (1980), the Supreme Court
 13 approved Washington's minimal burden on tribal retailers of keeping records of
 14 *nontaxable* transactions (sales to tribal members). *Id.* Further, the Ninth Circuit's
 15 holding in *United States v. Gord* precludes Defendant's argument that his delivery
 16 of the unstamped cigarettes to other tribal members renders Washington's tax laws
 17 inapplicable:

18 under Washington law, all unstamped, unapproved cigarettes are
 19 "subject to seizure[,] . . . tax and penalties," even if possessed by and
 20 distributed to Native Americans. Wash. Admin. Code § 458-20-192.
 21 Thus, even if the [retailer to whom the cigarettes were delivered] is a
 tribal organization, the unstamped cigarettes were contraband under
 the CCTA unless they were preapproved by the Washington
 Department of Revenue and were sold to Native Americans.

22 *Gord*, 77 F.3d at 1194.

23 The Court finds it did not commit clear error in denying Mr. Fiander's
 24 earlier motion to dismiss based on lack of predicate violation in its September 15,
 25 2006 Order (Ct. Rec. 314) and denies his motion to reconsider.

26 **D. Motion for Leave to File Interlocutory Appeal**

27 Defendant asks for leave to interlocutorily appeal the Court's September 15,
 28 2006 Order (Ct. Rec. 314) discussed above. He also asks for leave to appeal the

1 Court's November 21, 2005 Order (Ct. Rec. 142) denying his motion to dismiss
2 based upon the Yakama Treaty of 1855, in particular the portions of the Order
3 ruling he possessed a treaty right to transport, but not deliver the unstamped
4 cigarettes involved in this case.

5 The government points out that Federal Rule of Appellate Procedure 4(b)
6 requires the filing of an appeal within ten days after the entry of either the
7 judgment or the order being appealed. Fed. R. App. P. 4(b). Defendant filed this
8 motion on January 18, 2007. Therefore, the government asserts his motion is time
9 barred. The government also states that, disregarding the time issue, the circuit
10 court's authority to review district court matters generally only inheres to final
11 decisions of the district courts. *United States v. Austin*, 416 F.3d 1016, 1019 (9th
12 Cir. 2005). A pretrial order "is not a final decision appealable under 28 U.S.C. §
13 1291." *Id.*

14 The "absence of jurisdiction altogether deprives a federal court of the power
15 to adjudicate the rights of the parties." *Gonzalez v. Crosby*, 125 S. Ct. 2641, 2649
16 (2005). Therefore, jurisdiction is a threshold matter and a fundamental question
17 before every court. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83,
18 94-95 (1998). Courts of appeals have jurisdiction over all final decisions of district
19 courts except where direct review may be had in the Supreme Court. 28 U.S.C. §
20 1291. Under § 1291, "a criminal case is generally not subject to appellate review
21 'until conviction and imposition of sentence.' Accordingly, denials of pretrial
22 motions are not usually appealable." *United States v. Hickey*, 367 F.3d 888, 890
23 (9th Cir. 2004) (quoting *Flanagan v. United States*, 465 U.S. 259, 263 (1984)).

24 Here, the Court's Orders denying Defendant's pretrial motions to dismiss
25 were not final decisions. Hence, § 1292 governs, and it grants courts of appeals
26 only limited jurisdiction over interlocutory appeals in civil actions. 28 U.S.C. §
27 1292 (granting jurisdiction for review of orders concerning injunctions, the
28 appointment or refusal to wind up receivers and receiverships, and in civil actions

1 when the order involves “a controlling question of law as to which there is
2 substantial ground for difference of opinion”). However, there is a limited, narrow
3 exception to the finality rule: the collateral order doctrine.¹ *Hickey*, 367 F.3d at
4 890. The collateral order doctrine “allows an immediate appeal from an
5 interlocutory order that ‘conclusively determine[s] the disputed question, resolve[s]
6 an important issue completely separate from the merits of the action, and [is]
7 effectively unreviewable on appeal from a final judgment.’” *Id.* at 890-91, *quoting*
8 *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978).

9 The collateral order doctrine does not apply in this circumstance, and the
10 court of appeals does not have jurisdiction at this time to review his claims.
11 Therefore, the Court denies his motion for interlocutory appeal.

12 **E. Memorandum re: Conflict of Interest**

13 Defense counsel states that in November 2003, two unindicted co-
14 conspirators, Harvey Davis, Sr. and John Hunter, were charged by criminal
15 complaint with various counts of money laundering and trafficking in contraband
16 cigarettes (Case. No. CR-03-2206-FVS). He represented Mr. Davis in plea
17 negotiations and in obtaining court approval of a plea agreement. Wayne Bjur
18 represented Mr. Hunter. Mr. Bjur died in October 2004, before the defendants
19 were sentenced. As a result, Mr. Hunter asked defense counsel, Jack Fiander, to
20 represent him at sentencing as well. Defense counsel did so after consulting with
21 all parties regarding the potential conflict of interest and obtaining waivers of the
22 same.

23 In August 2005, Roger Fiander was indicted in this matter, and he is charged
24 with delivering unstamped cigarettes in violation of the CCTA to Lil’ Brown
25 Smoke Shack, where Mr. Hunter is employed. Defense counsel obtained consent

26 ¹ Another exception to the finality rule exists for the Government only. The
27 Government may lodge an interlocutory appeal in limited circumstances from an
28 adverse order pursuant to 18 U.S.C. § 3731.

1 from Mr. Hunter to represent Mr. Fiander and Mr. Hunter. However, Mr. Hunter's
2 waiver of conflict of interest was limited to consenting to counsel's representation
3 of Mr. Fiander in order to present motions where their interests mutually coincided
4 and which benefitted but were not adverse to Hunter's and Fiander's interests.
5 Specifically, Mr. Hunter consented to defense counsel's (1) appearing as counsel
6 for Roger Fiander for the purpose of presenting a motion to dismiss his indictment
7 based on the Treaty of 1855 and (2) submission of an *amicus curiae* brief to the
8 Ninth Circuit in the *Smiskin* appeal.

9 Defense counsel became aware of Mr. Hunter's potential appearance as a
10 witness in this case after receiving an ATF report of an interview with him dated
11 February 2, 2007. He has reviewed his waivers, and he has no consent or waiver
12 of conflict of interest from Mr. Hunter or from Mr. Davis to represent Mr. Fiander
13 should the matter go to trial and their interests are no longer harmonious. Mr.
14 Hunter's present counsel, George Colby, has informed defense counsel that it is
15 unlikely Mr. Hunter will waive conflicts of interest.

16 Defense counsel states that there is potential for actual conflicts of interest
17 here. Although the matter to which Mr. Hunter pled guilty is final, the statute of
18 limitations has not expired on other charges or counts Mr. Hunter could potentially
19 face if defense counsel cross-examined him.

20 The Court has considered several options available to it to deal with the
21 conflict of interest. After consideration of the various interests of Defendant and
22 co-Defendants, the government, the witnesses, and the public, and also considering
23 the nature of the conflict and the timing of the disclosure in relation to the fast-
24 approaching trial date, the Court believes the best resolution of this conflict is to
25 appoint separate co-counsel for the limited purpose of cross-examining any and all
26 witnesses with whom defense counsel Jack Fiander has a conflict. Appointing
27 separate co-counsel for this limited purpose will protect the witnesses' attorney-
28 client privileges and avoid the appearance of impropriety, and it will permit

1 Defendant Fiander to continue to receive effective representation. *See United*
2 *States v. O'Malley*, 786 F.2d 786, 790 (7th Cir. 1986). Accordingly, the Court
3 denied Mr. Fiander's Motion in Limine (Ct. Rec. 379), filed after the pretrial
4 conference in this matter.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Louie Mahoney's Motion to Dismiss Indictment (Ct. Rec. 330) is
7 **DENIED**.

8 2. Louie Mahoney's Motion to Bifurcate Forfeiture Proceedings (Ct. Rec.
9 359) is **GRANTED**.

10 3. Louie Mahoney's Renewed Motion to Dismiss Based on Discriminatory
11 Enforcement (Ct. Rec. 362) is **DENIED**.

12 4. Louie Mahoney's Motion to Appoint Co-Counsel (Ct. Rec. 364) is
13 **DENIED**.

14 5. Christine Mahoney Meyer's Motion for Joinder (Ct. Rec. 333) is
15 **GRANTED**.

16 6. For the reasons stated on the record, Christine Mahoney Meyer's Motion
17 to Change Venue for Trial (Ct. Rec. 335) is **DENIED**.

18 7. For the reasons stated on the record, Margaret Jose's Motion for Bill of
19 Particulars (Ct. Rec. 338) is **DENIED**.

20 8. Margaret Jose's Motion for Joinder (Ct. Rec. 341) is **GRANTED**.

21 9. Margaret Jose's Motion for Extension of Time to File (Ct. Rec. 345) is
22 **DENIED**.

23 10. Roger Fiander's Motion to Dismiss Count(s) (Ct. Rec. 298) is
24 **DENIED**.

25 11. Roger Fiander's Motion to Dismiss Count(s) 1956(a)(2) (Ct. Rec. 302)
26 is **DENIED**.

27 12. Roger Fiander's Motion for Reconsideration re: Motion to Dismiss Case
28 for Lack of a Predicate Violation per RCW 37.12.010 (Ct. Rec. 319) is **DENIED**.

1 13. Roger Fiander's Motion for Leave to File Interlocutory Appeal (Ct. Rec.
2 347) is **DENIED**.

3 14. Roger Fiander's Motion *in Limine* (Ct. Rec. 379) is **DENIED**.

4 15. Roger Fiander's Motion to Shorten Time for Hearing on Motion *in*
5 *Limine* (Ct. Rec. 380) is **GRANTED**.

6 16. The Court **REFERS** the matter of appointing co-counsel for the limited
7 purpose of conducting cross-examination of any and all witnesses with whom
8 defense counsel Jack Fiander has a conflict to Magistrate Judge Leavitt.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
10 Order and forward copies to counsel and to Magistrate Judge Leavitt.

11 **DATED** this 19th day of March, 2007.

12 *s/ Robert H. Whaley*

13 ROBERT H. WHALEY
14 Chief United States District Judge
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